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7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)	Criminal Case No. 07CR3021-WQH
)	
11 Plaintiff,)	DATE: March 17, 2008
)	TIME: 2:00 p.m.
12 v.)	
)	GOVERNMENT'S RESPONSE IN
13 PEDRO CRUZ-TERCERO,)	OPPOSITION TO DEFENDANT'S
)	MOTIONS IN LIMINE TO:
14 Defendant.)	
)	1) DISALLOW 609 EVIDENCE
15)	REGARDING OTHER CRIMES;
)	2) ALLOW REFERENCE TO
16)	PUNISHMENT ENHANCEMENT;
)	3) ALLOW U.S. BORDER PATROL
17)	AGENTS TO TESTIFY AT TRIAL;
)	AND DEFENDANT'S MOTIONS;
18)	1) SUPPRESS STATEMENTS DUE TO
)	VIOLATION OF MIRANDA; AND,
19)	2) SUPPRESS STATEMENTS DUE TO
)	INVALID WAIVER;
20)	TOGETHER WITH MEMORANDUM OF
)	POINTS AND AUTHORITIES
21)	

22 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through
23 its counsel, Karen P. Hewitt, United States Attorney, and Christopher
24 P. Tenorio, Assistant United States Attorney, and hereby files its
25 response in opposition to Defendant's above-referenced motions. Said
26 response is based upon the files and records of the case, together
27 with the attached Memorandum of Points and Authorities.

28 //

I.

INTRODUCTION

Defendant Pedro Cruz-Tercero has filed both motions in limine and substantive motions. The Government incorporates by reference the Statement of Facts from its previous response in opposition to Defendant's motions, filed on February 4, 2008. As addressed below, the Government also incorporates by reference its previously-filed opposition to Defendant's motions.

II.

POINTS AND AUTHORITIES**A. THE GOVERNMENT WILL NOT SEEK TO ADMIT EVIDENCE PURSUANT TO RULE 609**

Defendant requests notice whether the Government intends to present evidence pursuant to Federal Rule of Evidence 609. The Government does not intend to present any evidence pursuant to either Rule 609 or 404(b).

B. EVIDENCE OF SENTENCING ENHANCEMENT NEED NOT BE PROVEN

Defendant argues that the Government must prove the fact of his prior felony conviction which may result in a sentencing enhancement. The Government responded to the argument in its opposition to Defendant's previous motion to dismiss the indictment for failure to allege essential elements. As the Government argued, Defendant's argument has been rejected in United States v. Covian-Sandoval, 462 F.3d 1090 (9th Cir. 2006), cert. denied, 127 S. Ct. 1866 (2007).

C. THE GOVERNMENT WILL PRESENT BORDER PATROL WITNESSES

Defendant asserts that the agents who encountered him, "must be brought to this Court" to see if they violated any of Defendant's Constitutional rights. Although Defendant provides insufficient

1 justification for his argument, opposition is academic because the
2 Government intends to call as witnesses at trial Border Patrol Agents
3 Jason Wardlow and Daniel Alvarado.

4 **D. DEFENDANT'S STATEMENTS AND IDENTITY NEED NOT BE**
5 **SUPPRESSED, AND NO HEARING IS NECESSARY**

6 The Government incorporates by reference its previous response
7 to Defendant's motions to suppress statements, filed on February 4,
8 2008 (Document 13). On that date, this court instructed the
9 Government to provide a copy of Defendant's video statement. The
10 Government will comply with the court's instruction. The Government
11 will also translate and transcribe the advisal and waiver, and will
12 provide copies of the same to the court and Defendant in advance of
13 the motion hearing.

14 **E. DEFENDANT VOLUNTARILY WAIVED HIS FIFTH AMENDMENT RIGHTS**

15 As stated above, the Government incorporates by reference its
16 previous response in opposition to Defendant's motion to suppress
17 statements.

18 **III.**

19 **CONCLUSION**

20 Based on the foregoing, the Court should deny Defendant's
21 motions.

22 DATED: March 5, 2008

23 Respectfully submitted,

24 KAREN P. HEWITT
25 United States Attorney

26 s/ Christopher P. Tenorio
27 CHRISTOPHER P. TENORIO
28 Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 07CR3021-WQH
)
Plaintiff,) **CERTIFICATE OF SERVICE**
)
v.)
)
PEDRO CRUZ-TERCERO,)
)
Defendant.)
_____)

IT IS HEREBY CERTIFIED that:

I, CHRISTOPHER P. TENORIO, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **GOVERNMENT'S RESPONSE AND OPPOSITION TO DEFENDANT'S MOTIONS** on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them:

Christian De Olivas, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/Christopher P. Tenorio
CHRISTOPHER P. TENORIO
Assistant U.S. Attorney